

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PATRICK FITZGERALD CHIOINO,

No. C 06-932 MHP (pr)

Petitioner,

**ORDER FOR SUPPLEMENTAL
BRIEFING**

v.

SCOTT M. KERNAN, warden,

Respondent.

On October 23, 2007, the court granted the habeas petition in this action and entered judgment. The court found an Apprendi/Blakely error in the 22-year sentence imposed and determined that petitioner's sentence had to be changed from 22 years to 18 years. The court wrote: "Within 120 days of the date of this order, the State of California shall cause Chioino's sentence in Monterey County Superior Court Case No. SS022872 to be fixed in accordance with this order. This court leaves it to state officials to determine the appropriate procedure to fix the unconstitutional sentence, i.e., whether state law requires that Chioino be re-sentenced or requires an amended abstract of judgment to correct the sentence or requires correction in another way." Order Granting Petition For Writ Of Habeas Corpus, pp. 11-12.

Respondent moved to alter or amend the judgment under Federal Rule of Civil Procedure 59(e). The court denied that motion on November 16, 2007.

Respondent now moves for a stay pending appeal. Respondent argues that this court erred in, among other things, the remedy it selected after finding an Apprendi/Blakely error. This court's consideration of the motion for a stay would be aided by learning what other courts have done upon finding a non-harmless error under Apprendi, Blakely or

1 Cunningham. Accordingly, no later than **January 7, 2008**, respondent may file and serve a
2 supplemental brief in which he cites to published cases in which the courts have addressed
3 the remedy to be employed after an error is found under Appendi, Blakely, or Cunningham
4 in a habeas action filed by a state court prisoner. Petitioner must file and serve his
5 opposition to the motion for a stay pending appeal no later than **January 14, 2008**.

6 IT IS SO ORDERED.

7 DATED: January 2, 2008


Marilyn Hall Patel
United States District Judge